



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Division of Marketing Practices

November 2, 2011

Filed Electronically

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation, Federal Trade Commission, CG Docket
No. 11 - 50, Dish Network, LLC Petition for Declaratory Ruling
Concerning the Telephone Consumer Protection Act ("TCPA")

Dear Ms. Dortch:

The undersigned hereby provides notice as required by Section 1.1206 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), 47 CFR § 1.1206, that on October 18, 2011, Federal Trade Commission ("FTC") employees Charles Harwood, Deputy Director of the Bureau of Consumer Protection, Lois Greisman, Associate Director of the Division of Marketing Practices, Roberto Anguizola, Assistant Director of the Division of Marketing Practices, and Russell Deitch, staff attorney, met with Jessica Almond, Legal Advisor to Chairman Genachowski, Kurt Schroeder and William Freedman of the Commission's Consumer and Governmental Affairs Bureau, and Jacob Lewis and Lawrence Bourne of the Commission's Office of General Counsel.

FTC staff stated that the FCC should follow the plain meaning of the words "on behalf of" in the TCPA and the implementing regulations. FTC staff also emphasized that there was no need to incorporate agency law. By way of comparison, FTC staff pointed out that the FTC has brought numerous cases involving Do Not Call and pre-recorded message violations under the Telemarketing Sales Rule, and none has relied on agency-law analysis.

Next, FTC staff stated that importing agency law would have a real impact on TCPA litigation, likely making it more difficult for the FCC, states and private litigants to prove violations. To support its point, FTC staff set forth a number of factual scenarios that currently occur in telemarketing, and explained how importing agency law would affect both the burden of proof in each scenario and the ultimate determination of whether a seller had violated the TCPA.

FTC staff also put forth an alternative to importing agency law. Citing to its Reply comment, FTC staff recommended that the FCC provide guidance to the courts about the nature and scope of seller liability under the TCPA, such as giving factors to be taken into account, if

the FCC does not adopt the plain meaning of the statute and its implementing regulations.¹ In addition to the factors identified in its Reply, FTC staff noted that another factor would include whether the telemarketer, dealer or person uses the seller's trademark. Finally, FTC staff noted that there may be cases in which a seller is liable for calls placed by another entity even in the absence of one or more of these factors, and that other factors may be applicable.

Regards,

s/Russell Deitch

Russell Deitch

Attorney, Division of Marketing Practices

cc: Jessica Almond
Kurt Schroeder
William Freedman
Jacob Lewis
Lawrence Bourne

¹The factors include whether: (1) a seller enters into contracts directly with consumers who chose to purchase the seller's goods or services in response to telemarketing; (2) a seller provides its services directly to those consumers; (3) a seller collects money for those services from its consumers; (4) a seller receives a continuing revenue from such consumers; (5) a seller compensates those who market its goods or services; and (6) the seller is in a position to monitor its telemarketers.